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Comparative EU constitutionalism

Constitutional Courts

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PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Hungary - competences

- Preventive review of legal norms
- Posterior review of legal norms
- Constitutional Complaint
- Unconstitutional Omission on Legislate
- Review of Conformity with Treaties
- Conflict of Competences
- Other Competences



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Preventive review of legal norms

Acts before promulgation
by the

Pres of the Rep

Standing Orders before the
adoption

Parliament

International treaties before
their confirmation by
Parliament

Pres of the Rep
Parliament
Government

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Posterior review of legal norms

Abstract review of legal norms (actio popularis)

Concrete review of legal norms

Judge

Procedure in conn with the complaint
of the public prosecutor

Result of the procedure – annulment

Ex nunc

Ex tunc

Pro futuro

Constitutional Complaint

- Admissability
 - Injury of HR's
 - Exhaustion of remedies
 - Meeting the deadline

NOT a real constitutional complaint

NOT about the decision

Base for renewal of the procedure

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Unconstitutional Omission on Legislate

- Anybody can make a proposal
- Ex officio
- No fulfillment of legally required lawmaking
 - the mandate results
 - no explicit mandate to legislate is necessary

Review of Conformity with Treaties

- Art 7 (1) - upon the application of state organs or ex officio
- Lawmaking (contradiction with a treaty) – omission to legislate

Legal norm under which
the treaty has been
promulgated

Legal norm at the same or
lower rank (annul)

Legal norm under which
the treaty has been
promulgated

Legal norm at higher rank

- change the treaty
- conform the domestic
legal norm

Conflict of Competences and other competences

- Bw state organs (courts excl.); bw local govts; bw state organs and local govts
- Neg and pos conflict of comps
- Legal remedy – plebiscit and popular initiatives
- Opinion on the (un)constitutional operation of the local councils
- Presidential impeachment process

Croatia – competences

- Assessment of constitutionality of laws and other regulations
- Constitutional complaint
- Observing the realization of constitutionality and legality
- Resolving jurisdictional disputes between legislative, executive and judicial branch
- Controlling the constitutionality of programs and activities of political parties
- Controlling the constitutionality and legality of the elections and the national referendum and the electoral disputes
- Omission in legislation

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Croatia – CC



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Review of constitutionality of laws and other regulations

Abstract review of legal norms

-NO actio popularis
- initiative by 'highest state organs' – next slide!

Concrete review of legal norms

Judge

Result of the procedure – annulment

Review of constitutionality of laws and other regulations

- 1/5 of MPs
- Committee of the Parliament
- Pres of the Rep
- Government
- Ombudsman
- Local governments
-(restricted)

Legal or natural persons

BUT

Constitutional Court
is NOT bound

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Constitutional complaint

Admissability

- injury of HR's
- exhaustion of remedies
- meeting the deadline

NOT a real constitutional complaint

NOT about the decision

except

in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated

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Observing the realization of constitutionality and legality

Monitoring function

Report 2002

- on certain constitutional aspects of the military actions undertaken to liberate the Croatian territory during the Croatian War of Independence

Report 2005

- on the right to trial within a reasonable time
- reason: the Croatian judicial system suffered from inefficiency

Review of political parties

Art. 6.4. Const

‘Political parties which by their programs or violent activities aim to demolish the free democratic order endanger the existence of the Republic of Croatia are unconstitutional. The decision on unconstitutionality shall be made by the Constitutional Court of the Republic of Croatia.

Art. 39. Const

‘Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.’

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Review of political parties

Initiated by

- Parliament
- Government
- Supreme Court
- Attorney General
- ombudsman

BAN

Electoral issues

The Constitutional Court:

- controls the constitutionality and legality of elections,
- controls the constitutionality and legality of the national referendum,
- decides on the electoral disputes (not in the competence of courts)

Electoral issues – elections

If electoral activities are not carried out in accordance to the Cons or laws

Lodged by

- political parties
- candidates
- 100 voters or more
- 5% of voters of the constituency affected

-Within 30 days from
the publication of results

Informing the people (media)

Annulment of electoral
activities and decisions

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Electoral issues – referenda

same rules applies AND

Examination of the

- content of question
- requirements of calling the referendum

Electoral issues – electoral dispute

Initiated by

- political parties
- candidates
- 100 voters or more
- 5% of voters of the constituency affected

**appeal
against**

the ruling of the
competent electoral
commission on
the protection of
electoral right

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Omission in legislation

- delegated legislation
- no law-making – no rules for applying legal norms being at higher level

Czech Republic - competences

- review of norms
 - inconsistency with the constitutional order or an Act
- constitutional complaints
- ex ante review of international treaty
- dissolution of political parties
 - decision on dissolution is constitutional
- conflict of interests (bw state organs and local govts)
- impeachment
- electoral disputes
 - on remedies on the result of the election of an MP or senator
- ‘mandate’ of MPs and senators
- ‘joint resolution’
- ‘implementation – international tribunal’
- ‘EU accession matters’

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Constitutional complaints



by the representative
body of a self-governing
unit against an unlawful
encroachment by the
state

against final decisions
or other actions by
public authorities
infringing
constitutionally
guaranteed HRs

Ex ante review of international treaty

to decide jurisdictional disputes concerning the conformity of an international treaty under **Article 10a** or **Article 49** with the constitutional order, prior to its ratification

'transfer of
certain
powers'

approval of
both chambers

Impeachment – ‘Mandate’ of MPs and senators

over a constitutional charge brought by the Senate against the President of the Republic pursuant to **Article 65.2**

loss of eligibility to hold office or the incompatibility under **Article 25** of some other position or activity with holding the office of deputy or senator

loss of office and eligibility to regain it

for high treason

office is terminated

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Joint resolution

–

‘Implementation’

to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate pursuant to **Article 66**

to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented

‘Lack’ of the Pres of the Rep.

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‘EU accession matters’

to review the decision of the President of the Republic, that the referendum about the accession to the European Union will not be held

decide whether the referendum about the accession to the EU was held in a manner consistent with the constitutional act about the referendum and the implementing act related thereto

Poland - competences

- the conformity of statutes and international agreements to the Constitution
- the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute
- the conformity of legal provisions issued by central state organs to the Constitution, ratified international agreements and statutes
- the conformity to the Constitution of the purposes or activities of political parties
- complaints concerning constitutional infringements (Article 79.1.)
- conflict of interests bw central constitutional organs

Constitutional complaints

complaints concerning constitutional infringements, as specified in **Article 79.1.**

- in accordance with principles specified by statute,
- everyone whose constitutional freedoms or rights have been infringed
- asking for a decision on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution
- these provisions shall not relate to the rights specified in **Article 56.**

Right of asylum



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Thank you for your attention!